

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE ASSOCIATED PRESS and
ERIC TUCKER,

Plaintiffs,

v.

UNITED STATES CENTRAL COMMAND,

Defendant.

COMPLAINT

Civil Case No.: 22-cv-3268

Plaintiffs THE ASSOCIATED PRESS and ERIC TUCKER, by and through their undersigned attorney, allege as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, *et seq.*, to obtain injunctive and other appropriate relief, seeking the release of agency records from the United States Central Command (“CENTCOM”) in response to a request properly made by Plaintiffs The Associated Press and Eric Tucker (hereafter, the “AP”).

PARTIES

2. Plaintiff The Associated Press is a mutual news cooperative organized under the Not-For-Profit Corporation Law of the State of New York. The Associated Press is headquartered in this judicial district at 200 Liberty Street, New York, New York, 10128.

3. Plaintiff Eric Tucker is a national security reporter for The Associated Press, based in the company’s Washington, D.C., news bureau. Tucker is a full-time employee of the AP, and he submitted the Request in his capacity as an agent for the company.

4. Defendant CENTCOM is an agency of the federal government that has possession, custody and/or control of the records that the AP seeks.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action and personal jurisdiction over CENTCOM pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and is based upon Plaintiffs' place of business.

7. FOIA requires that agencies respond to FOIA requests within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A).

8. AP is deemed to have exhausted all of its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C) because CENTCOM failed to respond within the statutorily mandated time limit of twenty working days after receipt of a request. 5 U.S.C. § 552(a)(6)(A).

FACTS

9. On February 3, 2022, CENTCOM carried out a raid in Atmeh, Syria, targeting the hideout of then-Islamic State leader, Abu Ibrahim al-Hashimi al-Qurayshi. *See* Ghaith Alsayed, Lolita C. Baldor, Bassem Mroue & Zeke Miller, *IS leader blows up self, family as US attacks Syria hideout*, The Associated Press (Feb. 3, 2022), <https://apnews.com/article/biden-says-us-raid-syria-killed-islamic-state-group-leader-ca598136de014e008f746a35f6f721b0>.

10. Al-Qurayshi, widely understood to be the leader of the Islamic State ("IS") terror group, was alleged to have played a key role in several atrocities committed by IS, including the mass killings of the Yazidi people in Iraq. *See* Bassem Mroue, *IS leader stayed hidden as he rebuilt group from defeat*, The Associated Press (Feb. 3, 2022), <https://apnews.com/article/abu-ibrahim-al-hashimi-al-qurayshi-is-syria-raid-fab8258e4ac5be4a90702d429ee693e6>.

11. The Biden Administration quickly announced the results of the raid. Within hours of the operation's completion, U.S. officials held an extensive background briefing for press representatives, providing information and answering questions about the operation, its goals and the administration's views of the raid.

12. President Biden discussed the raid in a public news conference shortly thereafter, describing the operation as "remov[ing] a major terrorist threat to the world." *See Remarks by President Biden on a Successful Counterterrorism Operation*, The White House (Feb. 3, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/03/remarks-by-president-biden-on-a-successful-counterterrorism-operation/>. Biden announced that al-Qurayshi died by exploding a bomb that killed himself and members of his family, including women and children, as U.S. forces approached the structure.

13. The President said that he had ordered U.S. forces to "take every precaution possible to minimize civilian casualties," citing civilian concerns as the reason the U.S. used special forces and did not conduct an airstrike on the home. *Id.*

14. Pentagon press secretary John Kirby said in a Defense Department briefing later that day that U.S. forces were able to evacuate 10 people from the building: a man, a woman and four children from the first floor and four children from the second floor. Kirby said that U.S. officials were working to determine whether American action resulted in any civilian deaths. *See Alsayed et al., supra* ¶ 9; *see also* Defense Department Briefing, John Kirby (Feb. 3, 2022), <https://www.c-span.org/video/?517714-1/pentagon-briefs-raid-killed-islamic-state-leader-syria>.

15. U.S. officials reported that the second floor of the house was occupied by a lower-ranking IS leader and his family, and that the first floor contained civilians who were

unconnected to the terrorist group and apparently unaware of al-Qurayshi's presence. Officials announced that the family on the first floor exited the building unharmed.

16. The IS lieutenant on the second floor, who officials did not name, was said to have barricaded himself inside along with his wife and to have engaged in combat with the commandos who entered the home after the explosion. After a firefight, in which both were killed, officials said four children were removed from the second floor alive by U.S. forces. Kirby said that a child on the second floor also died, though the circumstances were not clear.

17. Another firefight erupted with a local extremist group with "hostile" intent, Kirby said. Two people were killed outside the house.

18. The special operations forces spent about two hours on the ground, longer than usual for such an operation — indicative, U.S. officials said, of caution to minimize civilian casualties.

19. Kirby said one of the helicopters in the raid suffered a mechanical problem and was redirected to a site nearby, where the helicopter was destroyed.

20. Witnesses reported that about 50 U.S. special operations forces landed in helicopters and attacked the house in Atmeh, clashing for two hours with gunmen. Residents described continuous gunfire and explosions that jolted the town near the Turkish border.

21. Gen. Frank McKenzie, head of CENTCOM and commander of the operation, said in comments to the Middle East Institute that the mission goal was to capture al-Qurayshi. He said the blast set off by the IS leader was larger than would have been expected from a suicide vest, and that al-Qurayshi's body was found on the ground outside the building, thrown from the third floor by the force of the blast. *See Terri Moon Cronk, McKenzie says ISIS leader who died*

during U.S. raid was 'evil', DOD News (Feb. 4, 2022), <https://www.defense.gov/News/News-Stories/Article/Article/2923605/mckenzie-says-isis-leader-who-died-during-us-raid-was-evil/>.

The Request

22. On February 9, 2022, the AP submitted a FOIA Request (the "Request") to CENTCOM, seeking copies of:

- (1) any and all body camera video and overhead video maintained and preserved by the DoD from participants in the 3 February 2022 USCENTCOM operation in Atmeh, Syria that targeted the leader of the Islamic State, Abu Ibrahim al-Hashimi al-Qurayshi, and that resulted in his death;
- (2) recordings of chat lines from operations centers from the duration of the operation, as well as transcripts and radio communications from military personnel on the ground and in the air during the operation, including but not limited to the duration of the destruction of the helicopter;
- (3) documents related to the operation between the dates of 1 January 2022 and 5 February 2022, including but not limited to emails from the inbox and outbox of General Frank McKenzie containing the following search terms: Hashimi, Qurayshi, and Atmeh;
- (4) any Central Command after-action reports on the operation between the dates of 3 February and 7 February 2022; and
- (5) any Civilian Casualty Assessment Report, or "CCAR," arising from the operation maintained by either USCENTCOM or DoD.

A true and correct copy of the Request is attached hereto as Exhibit A.

23. On February 16, 2022, CENTCOM acknowledged receipt of the Request. The “Interim Letter” notified the AP that the Request was number 3,440 in the CENTCOM FOIA queue. A true and correct copy of the Interim Letter is attached hereto as Exhibit B. As of the date of this filing, the CENTCOM FOIA site shows that the Request is now number 3,383 in the FOIA queue.

24. CENTCOM has not communicated with the AP regarding the Request since sending the Interim Letter on February 16, 2022. CENTCOM has provided no substantive response to the Request.

FIRST CAUSE OF ACTION
(Violation of FOIA for failure to make records available)

25. AP repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

26. CENTCOM is an agency subject to FOIA, 5 U.S.C. § 552(f), and therefore must disclose in response to a FOIA request all responsive records in its possession at the time of the request that are not specifically exempt from disclosure under FOIA, and must provide a lawful reason for withholding any records as to which it is claiming an exemption.

27. CENTCOM’S failure timely to disclose the records requested by AP violates FOIA, 5 U.S.C. § 552(a)(3)(A). Accordingly, AP is deemed to have exhausted its administrative remedies under FOIA.

28. AP is entitled to an order compelling CENTCOM to produce the records responsive to the Request.

REQUEST FOR RELIEF

WHEREFORE, AP respectfully requests that this Court:

- a. Expedite consideration of this Complaint pursuant to 28 U.S.C. § 1657;
- b. Declare that the records sought by the AP, as more particularly described above, are public records pursuant to 5 U.S.C. § 552, and that the records must be disclosed;
- c. Order CENTCOM to undertake an adequate search for the requested records and to provide those records to the AP, including electronic copies of records stored in electronic format, within 20 business days of the Court's order;
- d. Award the AP the costs of this proceeding, including reasonable attorney's fees, as authorized by FOIA; and
- e. Grant the AP such other and further relief as this Court deems just and proper.

Dated: April 21, 2022

Respectfully submitted,

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